

Message Text

CONFIDENTIAL

PAGE 01 STATE 155035
ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 PM-04 DODE-00 CIAE-00 INR-07
NSAE-00 SS-15 NSC-05 SP-02 H-01 OMB-01 (ISO) R

\$4AFTED BY L/PM:SAORLINS:PAT:MAD
APPROVED BY L/PM:JHMICHEL
L/T - MR. ROVINE
DOD/ISA - MR. TIMBERLAKE
EUR/ NE- MR. SHUMATE
DSAA - MR. MCNICHALOUS
PM/SAS - MR. SMITH
-----042356 021855Z /53
R 020320Z JUL 77
FM SECSTATE WASHDC
TO AMEMBASSY LONDON

C O N F I D E N T I A L STATE 155035

E.O. 11652: N/A

TAGS: MARR, MASS, UK

SUBJECT: U.S. VIEW CONCERNING STATUS OF MEMORANDUM OF
UNDERSTANDING

REF: LONDON 10002

1. WE APPRECIATE THE PROBLEM POSED BY THE BRITISH AND
AGREE THAT IT SHOULD BE RESOLVED QUICKLY AND THAT IT NEED
NOT REACH QUOTE THE HIGHEST LEVEL UNQUOTE.
2. OUR CONSISTENT POSITION HAS BEEN THAT THE INTENT OF
THE PARTIES AND THE NATURE OF THE OBLIGATIONS UNDERTAKEN,
NOT THE MERE FORM OF AN AGREEMENT, DETERMINE WHETHER IT
HAS BINDING EFFECT. ACCORDINGLY, THE CONCLUSION OF AN
AGREEMENT IN THE FORM OF AN MOU DOES NOT IMPLY THAT THE U.S.
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 155035

VIEWS THE OBLIGATIONS IN THE MOU AS NONBINDING. IN THIS
INSTANCE THE ISSUE HAS ARISEN IN THE CONTEXT OF THE NEGO-
TIATION OF THE SALE OF THE SUB-HARPOON MISSILE. WE HAVE
DECIDED THAT THAT MOU CONTAINS OBLIGATIONS (E.G., ASSESS-
MENT OF TERMINATION COSTS, PROTECTION OF U.S. ORIGIN
INFORMATION, INDEMNIFICATION, SECURITY AND PUBLIC DIS-
CLOSURE OF INFORMATION), WHICH ARE AND SHOULD BE BINDING

AND THEREFORE WE CANNOT AGREE TO MAKE IT A NONBINDING MOU.

3. TO SATISFY SOME OF THE BRITISH CONCERNS MENTIONED IN REFTEL THE U.S. PROPOSED THAT THE MOU CONTAIN THE FOLLOWING LANGUAGE QUOTE ANY DISAGREEMENT REGARDING THE INTERPRETATION OR APPLICATION OF THIS MOU SHALL BE RESOLVED BY CONSULTATIONS BETWEEN THE PARTIES AND SHALL NOT BE REFERRED TO AN INTERNATIONAL TRIBUNAL OR A THIRD PARTY FOR SETTLEMENT UNQUOTE.

4. THE USG, HOWEVER, CANNOT AGREE TO THE BRITISH PROPOSAL THAT ALL FUTURE MOUS WILL NOT BE CONSIDERED AS LEGALLY BINDING. ANY SUCH DETERMINATION WOULD HAVE TO BE MADE ON A CASE-BY-CASE BASIS. (A) IN THIS REGARD IT MUST BE REALIZED THAT AS A GENERAL PRINCIPLE THE USG RARELY ENTERS INTO AGREEMENTS WITH OTHER GOVERNMENTS WHICH ARE NONBINDING EXCEPT UNDER EXCEPTIONAL CIRCUMSTANCES WHEN A COMPELLING REASON EXISTS FOR SUCH AN ACTION. (0) FURTHERMORE, SINCE U.S. PRACTICE DOES NOT CONSIDER NON-BINDING AGREEMENTS AS INTERNATIONAL AGREEMENTS REPORTABLE UNDER THE CASE ACT, ACCEPTANCE OF THE BRITISH PROPOSAL COULD BE VIEWED BY CONGRESS AS AN ATTEMPT BY THE EXECUTIVE TO EVADE THE REQUIREMENTS OF THE CASE ACT. CONGRESSIONAL PERCEPTIONS OF EXECUTIVE BRANCH EVASIONS AND ABUSES IN THIS AREA HAVE LED TO THE INTRODUCTION IN THE HOUSE AND

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 155035

SENATE OF WIDELY SUPPORTED LEGISLATION SUBJECTING ALL INTERNATIONAL AGREEMENTS OF THE U.S., INCLUDING NON-BINDING COMMITMENTS, TO A CONGRESSIONAL VETO. WE HAVE STRONGLY OPPOSED SUCH LEGISLATION. (C) FINALLY, SINCE WE SIGN NUMEROUS MOUS WITH VARIOUS ALLIES GOVERNING THE SALE OR COPRODUCTION OF MILITARY EQUIPMENT, THE PROCEDURE SUGGESTED BY THE UK WOULD SET A PRECEDENT WHICH WE WOULD NOT WANT TO FOLLOW IN OTHER COUNTRIES.

5. CURRENTLY, WE ARE AWAITING A BRITISH REPLY TO OUR PROPOSED LANGUAGE IN PARA 3. ACCORDINGLY, YOU MAY INFORM THE BRITISH THAT WE HAVE NOT RECEIVED A REPLY TO OUR PROPOSED LANGUAGE, AND ARE HOPING THAT IT MEETS THE BRITISH CONCERNS MENTIONED REFTEL. YOU MAY ALSO INFORM THE BRITISH THAT WE DO NOT BELIEVE THAT MOUS WILL HAVE TO BE DRAFTED DIFFERENTLY IN THE FUTURE. CHRISTOPHER

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PUBLIC DISCLOSURE, MILITARY SALES, INFORMATION CONTROL
Control Number: n/a
Copy: SINGLE
Sent Date: 02-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE155035
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D770237-0348
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770794/aaaadefr.tel
Line Count: 110
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: ebd3f071-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 77 LONDON 10002
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 15-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1974850
Secure: OPEN
Status: NATIVE
Subject: U.S. VIEW CONCERNING STATUS OF MEMORANDUM OF UNDERSTANDING
TAGS: MARR, MASS, UK
To: LONDON
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/ebd3f071-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009